

DIANE B. KATZ

IBLA 79-355

Decided April 10, 1980

Appeal from a decision of the Utah State Office, Bureau of Land Management, requesting an amendment of geothermal lease offer, U-42581, to include the E 1/2 NE 1/4 sec. 8, T. 8 N., R. 7 W., Salt Lake meridian, Utah.

Affirmed as modified.

1. Applications and Entries: Amendments -- Geothermal Leases:
Applications: Amendments -- Geothermal Leases: Applications:
Description -- Geothermal Leases: Description of Land

The Bureau of Land Management has no authority to correct an error in a description of land sought under a geothermal lease application. An amendment of the land description in a noncompetitive geothermal lease application received after the close of the monthly filing period in which the initial offer was filed will not be allowed.

2. Applications and Entries: Amendments -- Geothermal Leases:
Applications: Amendments -- Geothermal Leases: Applications:
Description -- Geothermal Leases: Description of Land

A noncompetitive geothermal lease application which fails to include all available lands within a surveyed or protracted section, as required by regulation, 43 CFR 3210.2-1(c), is properly rejected as to such section.

APPEARANCES: Diane B. Katz, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

This is an appeal from a decision of the Utah State Office, Bureau of Land Management (BLM), dated March 22, 1979, which requested that appellant supply a prelease plan of operation for sec. 4, and lots 1 and 2 of sec. 8, T. 8 N., R. 7 W., Salt Lake meridian, Utah, aggregating 697.96 acres. The decision noted that appellant's application also included the E 1/2 NW 1/4 sec. 8, but pointed out that sec. 8 does not include that subdivision. Section 8, however, does contain an E 1/2 NE 1/4 subdivision. Appellant duly filed an appeal, directed not to the requirement of filing a prelease plan of operation, but rather to the exclusion of the E 1/2 NE 1/4 from her application. On appeal, Katz states that the description in her application of E 1/2 NW 1/4 was a clerical error and requests permission to amend her application to include the E 1/2 NE 1/4.

[1] The question whether an amendment to a geothermal lease application can be permitted has been examined by the Board. In Edward B. Towne, 21 IBLA 304 (1975), the Board noted that while there are clear similarities between the geothermal leasing statute and regulations and the statute and regulations pertaining to oil and gas leasing, certain distinctions nevertheless exist. One of these distinctions is dispositive herein.

A key consideration in the instant appeal is the fact that lands which are classified as within a "known geothermal resources area" (KGRA) must be leased competitively. 30 U.S.C. § 1003 (1976). In this regard, the geothermal Act is similar to the oil and gas leasing Act which requires that land within a "known geologic structure of a producing oil or gas field" (KGS) also be leased competitively. A KGS determination, however, is made solely on the basis of geological information of the existence of structures containing oil or gas underneath the surface of the land. See 30 U.S.C. § 226 (1976); 43 CFR 3100.0-5(a). The establishment of a KGRA, however, is predicated on factors in addition to geological information, including consideration of "competitive interests." 30 U.S.C. § 1001(e) (1976).

As Towne noted, "competitive interest" exists "in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by that application are also covered by another application which was filed during the same application filing period." 43 CFR 3200.0-5(k)(3). The pertinent regulation provides that filing periods commence on the first business day of each month and end on the last business day of each month. 43 CFR 3210.2-2.

In light of these factors, the Board held that an amendment of the land description in a noncompetitive lease application received after the close of the monthly filing period in which the initial

offer was filed could not be allowed. Accord, Energy Partners, 21 IBLA 352 (1975). We adhere to that ruling. Therefore, appellant's request to amend her application cannot be allowed.

[2] Appellant correctly notes that under the applicable regulation, 43 CFR 3210.2-1(c), an applicant for a geothermal resources lease must apply for all available lands within a section or the application is properly rejected as to that section. Thus, inasmuch as appellant failed to apply for the E 1/2 NE 1/4 sec. 8, which was available, her application for lots 1 and 2 in sec. 8 should also have been rejected. Accordingly, we hereby modify the State Office's decision ordering the submittal of a prelease plan to encompass only the land within sec. 4.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

